

REMARKS

The present application was filed on August 7, 2001 with claims 1-49. Claims 1, 25 and 49 are independent. In the outstanding Office Action, the Examiner rejected claims 1-49 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,681,060 to Acharya et al. (hereinafter "Acharya").

In the latest Office Action, the Examiner contends that the previously submitted declaration was insufficient to predate the Acharya reference. At the suggestion of the Examiner, Applicant's attorney has contacted Examiner Pinchus Laufer to discuss this insufficiency and the additional material required to overcome the Acharya reference. Applicants have submitted this additional material in accordance with the discussion with Examiner Laufer.

With regard to the previously submitted inventor declaration, it should first be noted that inventor Chung-Sheng Li signed an identical declaration separate from inventors Lawrence Bergman and Vittorio Castelli. Both copies of the declaration were submitted with the previous response, and have been resubmitted with this response for the convenience of the Examiner. Additionally, Examiner Laufer has indicated that the misnumbering of the paragraphs is considered a minor typographical error that would not require reexecution of the declaration.

The inventor declaration provides sufficient evidence to establish a conception of the invention prior to the effective date of Acharya. The declaration provides a draft application sent by an inventor to the inventor's attorneys, on January 2, 2001, which describes an invention falling within independent claims 1, 25 and 49, as well as one or more dependent claims. This exhibit is provided as support for the assertion in paragraph 3 of the inventor declaration.

An attorney affidavit and corresponding exhibits has been submitted with this response to provide additional evidence of diligence. As described by the Examiner, the critical period for diligence begins just prior to the March 23, 2001, the effective date of Acharya, and ends with the date of constructive reduction to practice for the invention on August 7, 2001, the filing of the patent application. Thus, as asserted in the attorney affidavit, reasonable attorney diligence took place just prior to the effective date until the constructive reduction to practice. This reasonable diligence has been established since the attorney worked on a reasonable backlog of cases which were taken up

in chronological order and carried out expeditiously before working reasonably hard on and completing a draft patent application for the present application during the continuous critical period. An attorney is not required to drop all other work and concentrate on the particular invention involved

Additionally, as asserted in the attorney affidavit, a draft patent application was sent to the inventors for review on July 23, 2001, followed by declaration and assignment documents on July 27, 2001 and July 31, 2001. Upon receiving the declaration and assignment documents, which were executed on August 2, 2001 and August 3, 2001, the U.S. patent application was filed on August 7, 2001. Therefore, the attorney affidavit and corresponding exhibits provide sufficient evidence to establish diligence.

The inventor declaration, attorney affidavit and their corresponding exhibits evidence the conception of an invention falling within independent claims 1, 25 and 49 and one or more dependent claims, at least as early as January 2, 2001, and thus prior to the March 23, 2001 effective date of Acharya. The inventor declaration, attorney affidavit and their corresponding exhibits further evidence due diligence in the preparation of a patent application from just prior to the March 23, 2001 effective date until the filing date of the U.S. patent application on August 7, 2001.

In view of the above, Applicants believe that claims 1-49 are in condition for allowance, and respectfully request withdrawal of the §103(a) rejection.

Respectfully submitted,



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Encl. Declaration of Prior Invention under 37 C.F.R. §1.131 (Bergman and Castelli);  
Declaration of Prior Invention under 37 C.F.R. §1.131 (Li);  
Declaration of Prior Invention Exhibits 1-3;  
Attorney Affidavit; and  
Attorney Affidavit Exhibits 1-3.